



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1123]

RIN 1625-AA00

Safety Zone; Eisenhower Expressway Bridge Rehabilitation Project; Chicago River South Branch, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chicago River South Branch near Chicago, Illinois. This zone is intended to restrict vessels from a portion of the Chicago River South Branch due to the rehabilitation of the Eisenhower Expressway Bridge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the rehabilitation of the Eisenhower Expressway Bridge. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Lake Michigan or a designated representative.

DATES: This rule is effective from 7 a.m. December 23, 2011 through 3 p.m. December 28, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1123 and are available online by going to www.regulations.gov, inserting USCG-2011-1123 in the "Keyword" box, and then clicking "search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground floor, Room W12-140, 1200 New Jersey Avenue SE, Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414-747-7148 or Adam.D.Kraft@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause

finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this. The final details for this project were not received by until less than four weeks before the start of the bridge rehabilitation project. Waiting for a comment period to run would prevent the Coast Guard from performing its statutory function of protecting life on navigable waters and thus would be impractical and contrary to the public interest.

Under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date would prevent the Coast Guard from performing its statutory function of protecting life on navigable waters and thus would be impractical and contrary to the public interest.

Basis and Purpose

The rehabilitation of the Eisenhower Expressway Bridge will occur from 7:00 a.m. to 3:00 p.m. on December 23, 2011. The threat or possibility of falling debris associated with the replacement of the bridge leafs poses serious risks of injury to persons and property. As such,

the Captain of the Port, Sector Lake Michigan, has determined that the rehabilitation project of the Eisenhower Expressway Bridge poses significant risks to public safety and property and that a safety zone is necessary.

Discussion of Rule

This temporary safety zone will be enforced from 7:00 a.m. to 3:00 p.m. on December 23, 2011 to protect the public from dangers associated with the scheduled rehabilitation of the Eisenhower Expressway Bridge. If the rehabilitation project efforts are cancelled due to inclement weather, then this safety zone will be enforced between 7:00 a.m. and 3:00 p.m. on December 28, 2011. The temporary safety zone will encompass all U.S. navigable waters of the Chicago River South Branch in the vicinity of the Eisenhower Expressway Bridge between Mile Marker 324.8 and Mile Marker 325.1 of the Chicago River South Branch in Chicago, Illinois.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or

her on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel

legal or policy issues. The safety zone around the bridge project will be relatively small and exist for relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on a portion of the Chicago River South Branch between 7:00 a.m. and 3:00 p.m. on December 23, 2011 or, in the event the rehabilitation

project efforts are cancelled due to inclement weather, between 7:00 a.m. and 3:00 p.m. on December 28, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Vessel traffic will be minimal due to the fact that the location of the safety zone is in an area that typically does not experience high volumes of vessel traffic during the hours of 7:00 a.m. and 3:00 p.m. Several commercial traffic entities have already been contacted concerning this closure and have confirmed that the effective period of the closure will not affect them in a negative way.

In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, or his or her on scene representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and

participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically

significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore,

it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have

concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone and is therefore categorically excluded under paragraph 34(g) of the Instruction.

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of

Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-1123 to read as follows

§ 165.T09-1123 Safety Zone; Bridge Rehabilitation Project,
Chicago River South Branch, Chicago, IL

(a) Location. The safety zone will encompass all U.S. navigable waters of the Chicago River South Branch in the vicinity of the Eisenhower Expressway Bridge between Mile Marker 324.8 and Mile Marker 325.1 of the Chicago River South Branch in Chicago, IL.

(b) Enforcement Period. This rule is enforceable between 7 a.m. and 3 p.m. on December 23, 2011. If the rehabilitation project efforts are cancelled due to inclement weather, then this safety zone will be enforceable between 7 a.m. and 3 p.m. on December 28, 2011.

(c) Regulations. (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard

commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be on land in the vicinity of the safety zone and will have constant communications with the involved safety vessels which will be provided by the contracting company, Walsh Construction.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

DATED: December 5, 2011

M. W. SIBLEY
Captain, U.S. Coast Guard
Captain of the Port, Sector Lake Michigan

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